

Applicants : BERMUDEZ, et al.
U.S. Serial No.: 09/645,415
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REMARKS

Claims 2, 5, 6, 12, 14, 16, 26, 29, 30, 36, 38, 40, 49, 52, 53, 59, 61, 63, 105, 118, 131, 144-155, 158-169, and 172-188 are pending in this application.

By this Amendment, Applicants presented new claims 249-257. New claims 249-257 correspond to the original and previously presented claims, namely canceled claims 240-248.

New claims 249-257 incorporated the suggestions of the Examiner who acknowledged:

- (1) "[T]he art of record teach making of an attenuated Salmonella comprising a nucleic acid encoding a protein that is a primary effector molecule and use of agents that would facilitate..." the release of the nucleic acid encoding the primary effector molecule. See page 11, paragraph 13 of the February 23, 2004 Office Action.
- (2) The Specification is enabling for "an attenuated Salmonella typhimurium wherein said attenuated Salmonella comprises a first nucleic acid encoding a primary effector molecule wherein said primary effector molecule is endostatin and a second nucleic acid encoding a secondary effector molecule wherein said secondary effector molecule is BRP." See page 3, paragraph 6 of the September 9, 2004 Final Office Action.

Support for claims 249-257 may also be found INTER ALIA on pages 77-87, lines 1-21, of the Specification as filed. Therefore, there is no issue of new matter and Applicants

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respectfully requests the entry of this Amendment. Upon entry, claims 249-257 will be pending and under examination.

37 C.F.R. §1.116(b) provides "Amendments presenting rejected claims in better form for consideration on appeal may be admitted." In addition, any amendment that will place the application either in condition for allowance or in better form for appeal may be entered. See MPEP §714.12. Accordingly, reconsideration is requested and a Notice of allowance is earnestly solicited.

The Examiner to whom this application has been assigned, rejected all pending claims in the September 9, 2004 Final Office Action. Applicants respectfully disagree with the Examiner's position for the below reasons:

35 U.S.C §112, FIRST PARAGRAPH, REJECTIONS

A. Applicants have satisfy the written description requirement under 35 U.S.C. §112, first paragraph

The Examiner rejected claims 2, 5, 6, 12, 14, 16, 26, 29, 30, 36, 38, 40, 49, 52, 53, 59, 61, 63, 105, 118, 131, 144-155, 158-169 and 172-188 as failing to comply with the written description requirement. The Examiner alleged that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors at the time the application was filed has possession of the claimed invention.

Without conceding the correctness of the Examiner's position and to expedite the prosecution of this Application, Applicants have added new claims 249-257 which incorporated

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the suggestions of the Examiner as set forth in the February 23, 2004 and September 9, 2004 Office Actions. New claims 249-257 do not contain the above mentioned issues, and Applicants respectfully request the entry and consideration of claims 249-257.

B. Applicants have satisfy the enablement requirement under 35 U.S.C. § 112, first paragraph

The Examiner rejected claims 2, 5, 6, 12, 14, 16, 105, and 144-155 under 35 U.S.C. §112, first paragraph, because the specification, while being enabling for an attenuated *Salmonella typhimurium* wherein said attenuated *Salmonella* comprises a first nucleic acid encoding a primary effector molecule is endostatin and a second nucleic acid encoding a secondary effector molecule wherein said secondary effector molecule is BRP, does not reasonably provide enablement for any attenuated tumor targeted bacteria comprising any number of nucleic acids encoding any number of primary effector molecules and any number of secondary effector molecules. The Examiner stated that the specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

Without conceding the correctness of the Examiner's position and to expedite the prosecution of this Application, Applicants have added new claims 249-257 which incorporated the suggestions of the Examiner as set forth in the February 23, 2004 and September 9, 2004 Office Actions. New claims 249-257 do not contain the above mentioned issues, and Applicants respectfully request the entry and consideration of claims 249-257.

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CONCLUSION

Applicants believe that all grounds of objections and rejections raised in the outstanding Final Office Action have been fully addressed. Accordingly, Applicants respectfully request the reconsideration and withdrawal of these grounds of objections and rejections and respectfully request favorable action to be rendered by the Examiner.

If a telephone interview would be of assistance in advancing prosecution of the subject application, Applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

No fee other than the FIFTY-FIVE DOLLARS (\$55.00) extension of time fee is deemed necessary in connection with the filing of this Communication. However, if any additional fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 50-1891.

Respectfully submitted,

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